

HEARING PROCEDURES

§ 18b.50 Statements of position and trial briefs.

The presiding officer may require parties and amici curiae to file written statements of position prior to the beginning of a hearing. The presiding officer may also require the parties to submit trial briefs.

§ 18b.51 Evidentiary purpose.

(a) The hearing is directed to receiving factual evidence and expert opinion testimony related to the issues in the proceeding. Argument will not be received in evidence; rather it should be presented in statements, memoranda, or briefs, as determined by the presiding officer. Brief opening statements, which shall be limited to statement of the party's position and what the party intends to prove, may be made at hearings.

(b) Hearings for the reception of evidence will be held only in cases where issues of fact must be resolved in order to determine whether the respondent has failed to comply with one or more applicable requirements of part 18 of this chapter. In any case where it appears from the respondent's answer to the notice of hearing or opportunity for hearing, from failure timely to answer, or from admissions or stipulations in the record, that there are no matters of material fact in dispute, the reviewing authority or presiding officer may enter an order so finding, vacating the hearing date if one has been set, and fixing the time for filing briefs under § 18b.70. Thereafter the proceedings shall go to conclusion in accordance with §§ 18b.70 through 18b.76. The presiding officer may allow an appeal from such order in accordance with § 18b.65.

[35 FR 10760, July 2, 1970, as amended at 51 FR 10386, Mar. 26, 1986]

§ 18b.52 Testimony.

Testimony shall be given orally under oath or affirmation by witnesses at the hearing; but the presiding officer, in the officer's discretion, may require or permit that the direct testimony of any witness be prepared in writing and served on all parties in advance of the hearing. Such testimony

may be adopted by the witness at the hearing, and filed as part of the record thereof. Unless authorized by the presiding officer, witnesses will not be permitted to read prepared testimony into the record. Except as provided in §§ 18b.54 and 18b.55, witnesses shall be available at the hearing for cross-examination.

[35 FR 10760, July 2, 1970, as amended at 51 FR 10386, Mar. 26, 1986]

§ 18b.53 Exhibits.

Proposed exhibits shall be exchanged at the prehearing conference, or otherwise prior to the hearing if the presiding officer so requires. Proposed exhibits not so exchanged may be denied admission as evidence. The authenticity of all proposed exhibits exchanged prior to hearing will be deemed admitted unless written objection thereto is filed prior to the hearing or unless good cause is shown at the hearing for failure to file such written objection.

§ 18b.54 Affidavits.

An affidavit is not inadmissible as such. Unless the presiding officer fixes other time periods affidavits shall be filed and served on the parties not later than 15 days prior to the hearing; and not less than 7 days prior to hearing a party may file and serve written objection to any affidavit on the ground that it is believed necessary to test the truth of assertions therein at hearing. In such event the assertions objected to will not be received in evidence unless the affiant is made available for cross-examination, or the presiding officer determines that cross-examination is not necessary for the full and true disclosure of facts referred to in such assertions. Notwithstanding any objection, however, affidavits may be considered in the case of any respondent who waives a hearing.

[35 FR 10760, July 2, 1970, as amended at 51 FR 10386, Mar. 26, 1986]

§ 18b.55 Depositions.

Upon such terms as may be just, for the convenience of the parties or of the Department of Veterans Affairs, the